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May 25, 2018

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 Twelfth Street SW  
Washington, D.C. 20554

Re: *Ex Parte* Comments of CenterPoint Energy Houston Electric, LLC, Florida Power & Light Company, and Virginia Electric and Power Company d/b/a Dominion Energy Virginia in the Matters of *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*; and *Accelerating Broadband Deployment* (WC Docket No. 17-84, GN Docket No. 17-83).

Dear Ms. Dortch:

On behalf of CenterPoint Energy Houston Electric, LLC, Florida Power & Light Company, and Virginia Electric and Power Company d/b/a Dominion Energy Virginia (referred to collectively as the “IOUs”),<sup>1</sup> this responds to recent recommendations of the Competitive Access to Broadband Infrastructure Working Group, as approved by the Broadband Deployment Advisory Committee (“BDAC”),<sup>2</sup> and various other proposals and comments respecting how current pole make-ready processes could be expedited, with minimal risk to the assets of the pole owner, and permitted pole licensees.<sup>3</sup> The vast majority of comments filed in this rulemaking demonstrate without question

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<sup>1</sup> The acronym “IOU” refers to an investor owned electric utility.

<sup>2</sup> Report of the Competitive Access to Broadband Infrastructure Working Group, presented to and approved by the Broadband Deployment Advisory Committee of the Federal Communications Commission, Jan. 23-24, 2018 (referred to hereinafter, and in the Proposed General Principles for Make-Ready appended hereto, as the “BDAC-CABI Proposal.”)

<sup>3</sup> See, e.g., Letter from Christopher Shipley, Attorney & Policy Advisor, INCOMPAS to Marlene Dortch, Secretary, Federal Communications Commission, WT Docket No. 17-79, WC Docket No. 17-84, MB Docket No. 17-91, GN Docket No. 17-72 (filed, Apr. 20, 2018) (“INCOMPAS *Ex Parte* I”); Letter from Heather Burnett Gold, President & CEO, Fiber Broadband Association to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 17-84 (“FBA *Ex Parte*”) (filed Apr. 10, 2018); Letter from Karen Reidy, Vice President, Regulatory Affairs, INCOMPAS to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 17-84 (filed Apr. 4, 2018) (“INCOMPAS *Ex Parte* II”); Letters from Steve Morris, Vice President and Associate General Counsel, NCTA to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 17-84 (filed Mar. 5, 2018, Apr. 4, 2018) (“NCTA *Ex Parte*”); Letters from Kristine Laudadio Devine, Harris Wiltshire & Grannis LLP, Counsel to Google Fiber Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 17-84 (filed Feb. 1, 2018, Mar. 14, 2018, Apr. 12, 2018) (“Google Fiber *Ex Parte*”); Letter from Ola Oyefusi, Director – Federal Regulatory, AT&T Services, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 17-84 (filed Jan. 22, 2018) (“AT&T *Ex Parte*”); Letters from Katherine R. Saunders, Managing Associate General Counsel, Federal Regulatory and Legal

that the make-ready process now codified in FCC's rules is not effective.<sup>4</sup> On one hand, the present need to coordinate work with each individual entity affected by a new project, and the resultant sequence of repeated field inspections, and multiple truck rolls is inherently inefficient.<sup>5</sup> On the other hand, a formidable disincentive exists for an incumbent communications attacher to cooperate in a process that ultimately will bring direct competition within its service footprint.<sup>6</sup> Therefore, the BDAC members, and most commenters concur, at a minimum, that a "one touch make-ready" ("OTMR") solution, managed by new attachers, should be mandated for simple transfers of communications lines that comprise the majority of make-ready requests.<sup>7</sup> From the perspective of the IOUs, this common sense approach also appropriately places the burden of coordinating make-ready work on the communications entity that ultimately will benefit from use of the pole.<sup>8</sup> Because an IOU pole owner's equipment seldom is impacted by make-ready in the communications space,<sup>9</sup> it is senseless that the FCC's rules have long imposed on IOUs the duty to manage nearly all aspects of the make-ready process.<sup>10</sup>

NCTA appears to be the sole voice in opposition to OTMR. The so-called Accelerated and Safe Access to Poles ("ASAP") Proposal advocated by NCTA prescribes unrealistically short time frames for each phase of the current pole access process,<sup>11</sup> but fails to cure the actual flaws inherent in how make-ready work is performed that are the most notable source of delays. For example, the

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Affairs, Verizon to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 17-84 (filed Nov. 13, 2017, Jan 19, 2018, March 8, 2018) ("Verizon *Ex Parte*").

<sup>4</sup> See *id.*

<sup>5</sup> See, e.g., INCOMPAS *Ex Parte* II at 1; FBA *Ex Parte* at 2; Google Fiber *Ex Parte* (Mar. 14, 2018) at 1), Verizon *Ex Parte* Mar. 8, 2018 at 1.

<sup>6</sup> See Google Fiber *Ex Parte* (Apr. 12, 2018) at 1-2; Verizon *Ex Parte* (Jan 19, 2018) at 2.

<sup>7</sup> See BDAC-CABI Proposal at 12-18. See also, INCOMPAS *Ex Parte* I at 1; FBA *Ex Parte* at 2; Google Fiber *Ex Parte* (Feb. 1, 2018) at AT&T *Ex Parte*; Verizon *Ex Parte* (Jan. 19, 2018) at 1.

<sup>8</sup> As the IOUs discussed in previously filed comments, IOU pole owners are not stakeholders in communications space make-ready, and in nearly all cases, permit each new attacher to select its own preferred contractor for purposes of work in the communications space. See Initial Joint Comments of CenterPoint Energy Houston Electric, LLC, Dominion Energy Virginia, and Florida Power & Light Company, WC Docket No. 17-84 at 10.

<sup>9</sup> In general, the *only* equipment maintained by IOU pole owners in the communications space is wireless devices used in automated metering networks.

<sup>10</sup> For example, 47 C.F.R. § 1.1420 ostensibly requires that IOU pole owners provide fee estimates for *all* make-ready in the communications space, manage make-ready, and in cases where make-ready is not completed within the time period prescribed by the rule, bear the risk of enforcement action; and 47 C.F.R. § 1.1422 further requires that IOU pole owners maintain lists of contractors for make-ready that does not impact their equipment.

<sup>11</sup> See NCTA *Ex Parte* (Mar. 5, 2018). Despite numerous accounts that pole owners are hard pressed to meet current deadlines for various phases of the pole access process, the ASAP Proposal reduces the time period for pole owners to review and respond to most initial applications from 45 to 15 days (47 C.F. R. § 1.1420(c), as proposed), the time period for pole owners to provide estimates for make-ready from 14 to 7 days (47 C.F. R. § 1.1420(d), as proposed), and time period for *all* parties to perform make-ready from 60 to 45, or in some cases 30 days (47 C.F. R. § 1.1420(g), as proposed). However, the ASAP Proposal notably overlooks claims that new attachers are often the cause of their own delays, maintaining the portion of the current rule that provides new attachers potentially unlimited time to pay fees due for make-ready.

ASAP Proposal would maintain the current sequence of duplicative visits to the pole,<sup>12</sup> and further, would provide *each* incumbent communications attacher on the pole unlimited discretion not only to opt out of OTMR,<sup>13</sup> but also to substantially constrain the current self-help remedy available to new attachers.<sup>14</sup> In fact, as Google Fiber explains, the ASAP Proposal would likely complicate, but certainly would *not* simplify the make-ready process from the perspective of new pole licensees.<sup>15</sup> Most objectionable, however, is that the ASAP Proposal would continue to impose on IOU pole owners the duty to coordinate all communications space make-ready,<sup>16</sup> but at the same time, would prohibit reasonable application requirements needed to evaluate the safety, reliability, engineering, and capacity impacts of new installations.<sup>17</sup> Moreover, the ASAP Proposal seemingly would enable a new attacher to evade an IOU pole owner's uniformly applied construction standards if a deadline indicated by the FCC's rules is missed.<sup>18</sup> For the IOUs, a make-ready approach such as the ASAP Proposal, which focuses exclusively on speed to market, and which discounts the critical business needs and resource constraints of IOUs, is simply unacceptable.

The IOUs support the BDAC's recommendations for an expedited and improved make-ready process,<sup>19</sup> including OTMR, subject to the clarifications and exceptions below, and fully described in the attached Proposed General Principles for Make-Ready:

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<sup>12</sup> See Google Fiber *Ex Parte* (Mar. 14, 2018) at 2 ("Where each attacher performs its own make-ready work, that necessarily requires multiple, sequential – not concurrent – trips to the pole").

<sup>13</sup> See NCTA *Ex Parte* (Mar. 5, 2018), 47 C.F.R. § 1.14xx, as proposed. ("A new attacher and existing attachers with facilities in the communications space may, at any time **voluntarily agree** to allow a new attacher to engage a pre-approved contractor to immediately perform make-ready activity that has been, approved by the utility (i.e., one touch make-ready).") (emphasis added)

<sup>14</sup> Under the current rule, a new attacher may use its own contractor to perform make-ready work that is not completed within the time period required by the FCC's rule. See 47 C.F.R. § 1.1420(e). However, the revised rule proposed by NCTA would mandate, in all such cases, that the new attacher employ a contractor pre-approved by the existing attacher that already failed to perform the requested make-ready. See NCTA *Ex Parte* (Mar. 5, 2018), 47 C.F.R. § 1.1422(d), as proposed.

<sup>15</sup> See Google Fiber *Ex Parte* (Mar. 14, 2018) at 2-3.

<sup>16</sup> See *supra* n. 11. The ASAP Proposal does not shift any of the burdens associated with the current pole access process, but instead, purports to remedy delays by imposing shorter mandatory deadlines for work performed by the pole owner.

<sup>17</sup> Of particular concern, NCTA's proposed 47 C.F.R. § 1.1420(j) seemingly would enable new pole licensees to evade field inspections, pole loading and engineering studies, and other analyses that IOU pole owners consider critical in evaluating the safety, reliability, engineering, and capacity impacts of some attachments,

<sup>18</sup> See NCTA *Ex Parte* (Mar. 5, 2018), 47 C.F.R. § 1.1420 (m), as proposed. To the extent that any IOU pole owner has determined that certain temporary attachment techniques result in adverse safety, reliability, engineering, and capacity impacts on its pole, the right of the pole owner to ban such techniques under Section 224(f)(2) is absolute. The FCC must not require IOU pole owners to permit an attachment, either temporary or permanent, that fails to comply with its uniformly applied standards for safe construction.

<sup>19</sup> In particular, the IOUs support the following proposals of the BDAC, subject to the clarifications and exceptions set forth in the attached Proposed General Principles for Make-Ready: Make-Ready Workflow: One Touch Make-Ready for Simple Work in the Communications Space, and Streamlined for Wireless Attachments (BDAC-CABI Proposal at 12); Make-Ready Contractors: One-Touch Make-Ready for Simple Attachments/ Streamlining for Wireless Attachments (BDAC-CABI Proposal at 19); Defining "Complete" Attachment Applications (BDAC-

- IOU pole owners must have an exclusive right to select contractors for, and to manage: (i) work on electrical lines, or on IOU equipment; (ii) work on any communications devices or equipment installed, or to be installed above the communications space; or (iii) work needed to replace any pole on which electrical lines or IOU equipment is maintained.
- IOU pole owners should be required to pre-approve, and to maintain lists of contractors for work above the communications space, or on IOU equipment, *only*. Lists of contractors pre-approved to perform work in the communications space must be jointly developed and maintained by the communications service providers who ultimately will employ or receive their services.
- The FCC’s current rules must be amended to clarify that a pole access applicant may be required to perform a survey of the requested poles as part of the initial application process, using its own preferred contractor. In turn, all such survey work may be subject to review and verification by an IOU pole owner’s responsible field personnel, through a joint field inspection.
- For all make-ready transactions, the FCC’s current rules must be amended to mandate a direct relationship between each new pole licensee, and the contractor or contractors that it employs to perform make-ready, such that make-ready fees are invoiced directly from the contractor to the licensee, and are paid by the licensee directly to the contractor. An IOU pole owner should be required to submit an estimate, and collect payment *only* for work that it performs.
- The FCC’s rules must permit post-installation inspections of all new attachments, at the sole cost of the new pole licensee, within a reasonable period after construction is complete.

To that end, the IOUs urge the FCC to reform the current make-ready process through its adoption of OTMR for “simple” projects in the communications space,<sup>20</sup> and to amend its rules consistent with the proposals of the BDAC, and the attached Principles.

The IOUs, however, strongly oppose the recommendation of the BDAC to require that pole owners include in their individual agreements, upon request, a “Most Favored Nation” (“MFN”) provision similar in nature to that mandated for all network interconnection agreements executed

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CABI Proposal at 25); Joint Field Survey to Examine and Analyze Proposed Pole Attachments (BDAC-CABI at 29); Improving the Requesting Attachments’ Self-Help Remedy (BDAC-CABI Proposal at 34); and the Addendum to the Report of the Competitive Access to Broadband Infrastructure Working Group, presented to and approved by the Broadband Deployment Advisory Committee of the Federal Communications Commission, Apr. 25, 2018.

<sup>20</sup> As described in the BDAC-CABI Proposal, “simple” make-ready projects are those that involve only transfers of existing attachments in the communications space, without any expectation of a service outage or facility damage, and which do not require splicing of any communication attachment, or relocation of any wireless attachment. *See* BDAC-CABI Proposal at 13.

pursuant to 47 U.S.C. § 252(i).<sup>21</sup> Importantly, the MFN requirement found in the FCC’s Part 51 rules is imposed by an elaborate statutory construct that directs carriers to make publicly available state commission approved interconnection terms and conditions offered by incumbent carriers, to their competitors.<sup>22</sup> IOU pole owners do not compete with their pole licensees in the provision of local telecommunications service, and are not subject to the FCC’s jurisdiction under this section of the Act.<sup>23</sup> Rather, in practice, negotiated pole access agreements are subject to mutually agreed confidentiality requirements that exist for the benefit of both parties.<sup>24</sup> Any abrupt departure from this practice would frustrate the reasonable expectations of IOU pole owners and communications service providers alike, who for decades presumed their bargained for pole access agreements to be confidential in nature. Moreover, the FCC has not endeavored to develop a factual record here, or even considered whether MFN requirements would encumber voluntary negotiations between pole owners and pole licensees.<sup>25</sup> The current “sign and sue” rule alone is adequate to ensure that pole access agreements under Section 224 are just, reasonable, and non-discriminatory.<sup>26</sup>

Please do not hesitate to contact the undersigned counsel if you have questions, or require any further information.

Respectfully submitted,

*Brett Heather Freedson*

Brett Heather Freedson

*Counsel to CenterPoint Energy Houston Electric, LLC,*

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<sup>21</sup> BDAC-CABI Proposal at 15.

<sup>22</sup> 47 U.S.C. § 252(i).

<sup>23</sup> See 47 U.S.C. § 251, 252. Importantly, the network interconnection provisions of the Act are applicable only to incumbent local exchange carriers, and their relationships with competitive telecommunications carriers. Because IOU pole owners generally do not provide telecommunications service, the same policy incentives do not dictate similar treatment here.

<sup>24</sup> The IOUs each include uniform confidentiality terms in each of their agreements with pole licensees. It has long been understood by IOU pole owners that communications attachers treat the negotiated terms and conditions of their pole access agreements as proprietary business information, the disclosure of which could adversely impact their competitive position in the local marketplace. In fact, certain *licensees* request non-disclosure agreements that protect even the fact that negotiations are ongoing, or that a pole access agreement has been executed.

<sup>25</sup> See, e.g., *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, Second Report and Order, 19 FCC Rcd 13494 (rel. Jul. 13, 2004). In the context of network interconnection agreements, the FCC eliminated its most liberal application of the Act’s MFN requirement in favor of the current “all-or-nothing rule,” concluding that MFN provisions frequently discourage meaningful trade-offs in negotiated in interconnection agreements, and are unnecessary where other safeguards exist against discrimination. At a minimum, the FCC must thoroughly consider the impact that MFN requirements would have on negotiations between pole owners and pole licensees before the BDAC’s proposal could be adopted.

<sup>26</sup> See 47 U.S.C. § 1.1404(k).



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*Florida Power & Light Company, and Virginia Electric  
and Power Company d/b/a Dominion Energy Virginia*

cc: Charles A. Zdebski



## **PROPOSED GENERAL PRINCIPLES FOR MAKE-READY OF CENTERPOINT ENERGY, DOMINION ENERGY AND FPL<sup>1</sup>**

*Classifications of Make-Ready; Definitions.* The IOUs support the three (3) distinct classifications of make-ready identified in the BDAC-CABI Proposal, and the manner in which those classifications of make-ready are defined;<sup>2</sup> provided, however, that the definition of “complex” make-ready must also cover work that requires contact with any IOU-owned equipment in the communications space that is used in the IOU pole owner’s electric utility operations.<sup>3</sup> The make-ready contractor selected by the new attacher, as identified in its application, shall determine whether any communications space make-ready is “simple” or “complex”, subject to the pole owner’s exclusive right to object to such determination. As the BDAC proposed, one touch make-ready (“OTMR”) is intended for, and must be applied solely to wireline deployments, and “simple” projects in the communications space.<sup>4</sup>

*Classifications of Make-Ready; Processes.* The IOUs support the rule framework proposed by the BDAC for “simple” work in the communications space; for “complex” work in the communications space; and for work in, or above the supply space.<sup>5</sup>

*Work in or Above the Supply Space.* An IOU pole owner must have sole discretion to approve any contractor who: (i) performs make-ready work on electrical lines, or on any IOU equipment on the pole, whether such equipment is located in, or above the communications space (including, but not limited to automated metering equipment); (ii) performs make-ready work on any communications device or equipment installed, or to be installed above the communications space; or (iii) replaces any IOU-owned pole for purposes of accommodating a new attachment (“Utility Contractor”). An IOU pole owner also must have sole discretion to require that any such work be performed by its own personnel, or by the contractor that such IOU pole owner routinely uses to perform work related to its electric utility operations. For work in, or above the supply space that does not require contact with electrical lines, or with utility-owned equipment, an IOU pole owner *may*, but shall not be required to permit pre-approval of contractors in the same manner as applied for contractors who perform work in the communications space.

*Lists of Approved Contractors.* IOU pole owners should be required to pre-approve, and to maintain lists of Utility Contractors (as herein defined) *only*. All Utility Contractors shall be both identified, and pre-approved at the sole discretion of an IOU pole owner, and no third party should be permitted to dispute any Utility Contractor identified on an IOU’s pole owner’s list. Lists of contractors pre-approved to perform work in the communications space (and if the IOU pole owner permits, work on communications devices and equipment above the communications space) (“Communications Contractors”) must be jointly developed and maintained by the communications service providers who ultimately will employ or receive their services. The IOUs support the process set forth in the BDAC’s proposal addendum as an equitable and expeditious means of identifying, examining, and

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<sup>1</sup> For purposes of these Proposed General Principles for Make-Ready, “IOUs” refers collectively to CenterPoint Energy, Dominion Energy, and FPL.

<sup>2</sup> The three (3) classifications of make-ready identified in the BDAC-CABI Proposal are: (i) “simple” make-ready in the communications space; (ii) “complex” make-ready in the communications space; and (iii) make-ready in or above the power/supply space. BDAC-CABI Proposal, 13-14.

<sup>3</sup> BDAC-CABI Proposal, 13-14.

<sup>4</sup> BDAC-CABI Proposal, 27.

<sup>5</sup> BDAC-CABI Proposal, 14-15.

approving Communications Contractors for all types of work.<sup>6</sup> The IOUs also support the BDAC's proposal that an independent third party (or organization) maintain current contractor lists, execute the required processes for qualification and pre-approval of contractors, and preserve records of all related notifications made under the FCC's rule.<sup>7</sup> For example, in the Commonwealth of Virginia, the Virginia Cable Telecommunications Association (VCTA) would be an appropriate alternative manager of all pre-approved Communications Contractors within the Commonwealth.<sup>8</sup>

*Minimum Qualification Requirements for Pre-Approved Communications Contractors.* The IOUs support the BDAC-proposed objective minimum qualification requirements for Communications Contractors.<sup>9</sup> Consistent with the recent addendum to the BDAC's proposal, an impacted IOU pole owner must receive written notice of each Communications Contractor who is proposed to perform work on its poles, which notice must include the name, contact information, and qualifications and experience of such contractor relevant to the work that such contractor has applied to perform. An IOU pole owner, in turn, may object to any proposed Communications Contractor within a period of thirty (30) days after receipt of such notice: (i) if it is determined that such contractor does not satisfy the minimum qualification requirements proposed by the BDAC; or (ii) if it is determined that such contractor does not meet any minimum qualification requirement of the IOU pole owner related to safety or reliability, that is disclosed to the public, and that is evenhandedly applied; or (iii) if it is determined, based on past record, that such contractor is not qualified to perform the work for which it seeks to be pre-approved. Also consistent with the recent addendum to the BDAC's proposal, an impacted IOU pole owner may remove from a contractor list any previously approved Communications Contractor for cause, based on the criteria set forth immediately above.<sup>10</sup> IOU pole owners shall have the sole right and duty to impose objective minimum qualification requirements for all Utility Contractors, which shall be publicly disclosed, and shall be evenhandedly applied.

*Notice of Selected Communications Contractors for Make-Ready.* A new attacher shall disclose to an IOU pole owner in its initial application the pre-approved Communications Contractor who it proposes to perform all "simple" make-ready in the communications space, and such contractor's preliminary determination of the need for "complex" make-ready. The IOU pole owner may, but shall not be required to approve as part of the application process any Communications Contractor who is not identified on the relevant contractor list before the date on which the application was submitted.<sup>11</sup> If the IOU pole owner permits third party contractors to perform certain limited work

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<sup>6</sup> Report of the Broadband Deployment Advisory Committee, Competitive Access to Broadband Working Group, Addendum ("BDAC-CABI Proposal Addendum"), 2-4. However, as discussed in the IOUs' *ex parte* comments dated May 25, 2018, IOU pole owners should *not* bear the burden of maintaining lists of Communications Contractors, as such contractors would not be approved to perform work on electrical lines or IOU-owned equipment.

<sup>7</sup> BDAC-CABI Proposal, 24.

<sup>8</sup> VCTA is an organization representing the interests of cable, telecommunications, and broadband service providers operating within the Commonwealth of Virginia.

<sup>9</sup> BDAC-CABI Proposal, 21-22.

<sup>10</sup> BDAC-CABI Proposal Addendum, 4-5.

<sup>11</sup> In cases where the selected Communications Contractor is not pre-approved, an IOU pole owner must be permitted to: (i) direct the new attacher to select a Communications Contractor from the list of contractors pre-approved to perform the work requested; or (ii) direct the new attacher to seek approval of its proposed contractor through the process recommended by the BDAC. Because the work generally performed by Communications Contractors does



on communications devices and equipment above the communications space, the new attacher also shall disclose to the IOU pole owner in its initial application the individual crew members who it proposes to perform the work requested, and their respective qualifications and experience; and in turn, the IOU pole owner, in its sole discretion, may exclude any crew member, based on the same minimum qualification requirements applied to all Communications Contractors, as set forth in the previous section. If “complex” make-ready in the communications space is needed, it shall be the duty of the attacher whose Communications Contractor will perform such work to provide written notice to the IOU pole owner, which shall include the name, contact information, and qualifications and experience of such contractor relevant to the work that such contractor is intended to perform. Such notice must be received by the impacted IOU pole owner no less than ten days (10) prior to the date on which the work is scheduled to take place; and in turn, the IOU pole owner, in its sole discretion, may exclude any crew member, based on the same minimum qualification requirements applied to all Communications Contractors, as set forth in the previous section.

*Contractors for Initial Survey Work.* The IOUs do not maintain minimum qualification requirements, or pre-approve any contractor retained by a new attacher to perform initial survey work. In all cases, a new attacher may, in its sole discretion, select a contractor to perform an initial survey of requested poles, as is typically required as part of the initial attachment application. However, in all cases, such survey work must be verified through a field inspection, conducted by the responsible personnel of the IOU pole owner. To that end, the IOUs oppose the revisions to 47 C.F.R. § 1.1422 recommended by the BDAC,<sup>12</sup> and instead propose that the FCC’s current rule be amended to reflect the manner in which surveys are conducted, and subsequently verified, in current practice. The IOUs support the BDAC’s proposal with respect to joint field inspections,<sup>13</sup> and concur that the practice of conducting a single joint field inspection among *all* stakeholders would expedite the overall application process, and reduce the costs associated with pole access.

*Notice of Make-Ready.* For projects where OTMR applies, the IOUs concur with the list of events recommended by the BDAC for which written notice would be required.<sup>14</sup> For *all* make-ready, the IOUs also concur with the BDAC’s proposed revisions to 47 C.F.R. § 1.1420(e),<sup>15</sup> which properly limit the role of pole owner in the make-ready process. In particular, an IOU pole owner should be required *only* to: (i) issue to existing attachers on the affected pole a written notice of the need for, and nature of make-ready (“Make-Ready Notice”); (ii) specify a date certain for the completion of the work described in the Make-Ready Notice; and (iii) provide to the entity who requested make-ready a copy of the Make-Ready Notice, and contact information for each existing attacher on the pole who may be affected by the work described in the Make-Ready Notice.<sup>16</sup>

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not contact electrical lines or IOU-owned equipment, the discretion to approve such contractors for OTMR should rest solely with the impacted communications attachers.

<sup>12</sup> BDAC-CABI Proposal, 42-43.

<sup>13</sup> BDAC-CABI Proposal, 32-33.

<sup>14</sup> BDAC-CABI Proposal, 16.

<sup>15</sup> BDAC-CABI Proposal, 38-42.

<sup>16</sup> The pole owner should be required to provide the contact information for each existing attacher who it reasonably anticipates will be impacted by make-ready, based on its current business records. The pole owner should *not* be required to independently confirm that such contact information is up to date, and should *not* be held responsible for any resulting delay in the event that an existing attacher failed to report a prior change in contact information.

*Estimate and Payment of Make-Ready Fees.* The FCC also should revise 47 C.F.R. § 1.1420(d) to require that make-ready transactions be made directly between the new attacher, and the contractor who ultimately performs the make-ready prescribed by the pole owner. For example, where OTMR applies, the new attacher should request an estimate of make-ready fees from the Communications Contractor identified in its initial application, and such make-ready fees should be invoiced by the Communications Contractor directly to the new attacher, and paid by the new attacher directly to the Communications Contractor. Where “complex” make-ready is needed to attach (including any make-ready above the communications space), the entity responsible for such work must issue to the new attacher an estimate of its make-ready fees within the fourteen (14) days of the date of the pole owner’s notice to existing attachers; provided, however, that the pole owner shall be required to issue an estimate of make-ready fees *only* for work that the pole owner or its contractor performs. Consistent with the FCC’s current rule, no party should be required to perform its work before the make-ready fees for such work are paid in full. Fees for any work associated with the make-ready process should be disclosed in itemized invoices to the entity for which make-ready is performed, but need not be standardized, or publicly disclosed.

*Allocation of Make-Ready Costs.* The IOUs support the proposed allocation of the following make-ready costs to the new attacher: (i) make-ready work for all attachments; (ii) joint field inspection; and (iii) damage to any existing attachment, or to any pole owner asset.<sup>17</sup> The FCC must not prohibit any IOU pole owner from prescribing – *as a condition to attachment* – any work that is needed to remediate a violation, or to ensure that its pole is safe, reliable, and properly engineered; provided, however, that all costs associated with such work must be allocated solely to cost causer, and not to any new attacher. The IOUs also concur with the BDAC and others that stakeholders should be free to negotiate indemnification, insurance, surety bond, and other risk management requirements in their individual pole attachment agreements.<sup>18</sup>

*Post Make-Ready Inspection.* The pole owner, and each entity having an attachment on the pole at the time that make-ready is performed, should be permitted, but should *not* be required, to conduct an inspection of its affected assets within a reasonable time period after receiving the new attacher’s notice that its installation is complete.<sup>19</sup> The time period during which a post-installation inspection is conducted shall be determined at the sole discretion of the pole owner, based on current workload, and shall be uniformly applied to all new installations. The cost of such post-installation inspections may be charged to the new attacher. If any violation or sub-standard installation is discovered, or if any new attachment fails to conform to the design approved in the attacher’s initial application, the new attacher may be required by the pole owner, or by the affected attacher, to remediate within no more than thirty (30) days of the date of written notice of the same. The FCC must not preclude, or in any way limit the rights of an IOU pole owner to conduct periodic inspections of its system, and to require pole licensees to remediate any violation of an applicable law, rule, code, or construction standard irrespective of when such violation occurred.

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<sup>17</sup> BDAC-CABI Proposal, 16-17.

<sup>18</sup> BDAC-CABI Proposal, 17.

<sup>19</sup> The IOUs concur with the BDAC’s proposal that a new attacher provide notice to the pole owner, and to existing attachers that make-ready is complete within fifteen (15) days. BDAC-CABI Proposal, 22.